IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 95 OF 2005

SHRI JOHN SEBASTIAN DIAS ....Applicants

Versus

SHRI B.ABDUL KADAR ....Respondents

Shri Mahesh Amonkar, Advocate for the Applicant.

Shri S. Singbal, Advocate for the Respondent.

Coram:- V.M. KANADE, J.

Date:- 13th July, 2005

P.C.:

Heard learned counsel for the Applicant and learned counsel appearing on behalf of the respondent.

This is an application for condonation of delay in filing Criminal Appeal. The Applicant is the original complainant. His complaint was dismissed for default by the J.M.F.C., Sattari. Immediately on the same day, application was made for restoration by the complainant. The said application was allowed and the complaint was restored. Against the said Order the respondent preferred a revision before the Sessions Court and the Revision application was allowed by the Sessions Court and thereafter the present appeal has been filed by the original complainant. It is stated in the application that the delay was caused in filing this Criminal Appeal as he bonafidely believed that the J.M.F.C. had powers to restore the complaint and therefore he filed an application for restoration. Thereafter the matter was heard by the Sessions Judge. After the Sessions Judge allowed the application of the respondent, thereafter the present appeal has been filed and therefore there is a delay of 42 days.

The learned counsel for the respondent has vehemently opposed the said application for condonation of delay. He has submitted that though the Sessions Court had indicated to the complainant that the Magistrate had no powers to restore the complaint which was dismissed for default, he proceeded to oppose the Criminal Revision application. He submitted therefore that this application was liable to be dismissed.

Taking into consideration the facts nnd circumstances of the case and particularly the fact that the complainant had acted immediately by filing an application before the Magistrate on the same day, for restoration, bonafidely believing that the Magistrate had powers to restore the complaint.

In my view, sufficient cause has been shown by the applicant for condonation of delay. Delay is therefore condoned in filing the present appeal. Criminal Misc. Application is allowed in the above terms. Place the Criminal Appeal for admission.

V.M. KANADE, J.